



OLC 74-0909/a

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

28 MAY 1974

Honorable Sam J. Ervin, Jr., Chairman
Committee on Government Operations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in reply to your letter dated 3 May 1974 requesting the views of this Agency on S. 3393, a bill "To provide for the establishment of a new office in the Executive Office of the President and a Joint Committee in the Congress in order to supervise policies and procedures with respect to the development and review of national defense and foreign policies of the United States and the protection and disclosure of information relating to such policies, and for other purposes."

Under S. 3393, a Joint Committee on Government Secrecy would be established in the Congress to oversee the practices of departments and agencies for the protection and dissemination of Government information to be kept secret, and to make determinations as to disclosure to the Congress and the public. The Joint Committee would have subpoena powers and redress to the courts to enforce its orders. An Office of National Defense and Foreign Policy Information headed by a Registrar would be established in the Executive Office of the President to perform similar functions within the Executive branch and to maintain a Register of such documents.

The principal responsibilities and functions of the Joint Committee are:

a. To review the practices of all Government departments and agencies for protecting and disseminating secret information and direct revision of such practices.

b. To direct any agency to provide for its review any document which is entered in the Register of National Defense and Foreign Policy Information and to determine whether such document shall be publicly disclosed.

c. To make available to Members and other committees of the Congress and to the public such information and reports from the Register which the Joint Committee deems necessary for activities of the Congress or appropriate for an informed public.

d. To recommend:

1. procedures for the Congress to protect or disclose documents held by the Congress and designated as secret by officials of the Executive;
2. action by other committees or agencies of Congress to be taken on requests for public disclosure of or access to documents under their control which are designated as secret by them or other agencies of Congress;
3. procedures for granting congressional employees access to documents designated as secret by the Executive and for disciplining such employees for violations;
4. legislation for the protection or disclosure of information dealing with the national defense or foreign policy.

The principal functions of the Registrar of National Defense and Foreign Policy Information are:

a. To maintain the Register of National Defense and Foreign Policy Information and to review entries on the Register to assure their compliance with the standards under which they are to be kept secret.

b. To furnish a copy of the Register to the Joint Committee on Government Secrecy.

c. To review and approve or disapprove proposed final administrative actions by any department or agency which would deny access to information, requested under the Freedom of Information Act, on the basis of classification.

d. To review and standardize practices and procedures within the Executive relating to security classification, security clearance procedures, and security measures for automatic data processing of secret information.

e. To report annually to the Congress, including data on the numbers and titles of officials authorized to classify information, the number of documents classified and declassified during the preceding year, and the number of documents to be kept secret for more than three years.

Additionally, under S. 3393, the name of the agency and official originating secret documents must be entered on the Register, although a code may be substituted for the official in the interest of personal safety. Finally, all classified documents must be entered on the Register either immediately or, for those classified within the previous ten years, within four years following enactment.

The protection of foreign intelligence information carries with it the added burden of protecting the Intelligence Sources and Methods involved in its collection and analysis. Grave damage to the nation's security could result if such Sources and Methods are not adequately protected. For example, vulnerable foreign sources would be understandably reluctant to provide information if they could not rely on the protection of their identity. Congress recognized these underlying considerations in the National Security Act of 1947, section 102(d)(3), which provides:

"That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

In furtherance of this statutory injunction, the security practices and disciplines of the Agency are specially structured to protect Intelligence Sources and Methods. Channels of dissemination are rigidly controlled and personnel and physical security standards exceed those established under Executive Orders.

Certain provisions of S. 3393 would impinge upon existing functions and responsibilities of this Agency:

a. The authority granted to the Joint Committee on Government Secrecy and the Registrar to oversee the Agency's security program and to direct the disclosure of foreign intelligence information could conflict directly with the statutory responsibility of the Director to protect Intelligence Sources and Methods and impair the effectiveness of existing foreign intelligence collection programs.

b. A similar conflict could arise over the comprehensive designation of total holdings of sensitive foreign intelligence information in the Government on the Register. The sensitivity of the compilation itself would exceed that of any one document in the Register, but no provision is made in the bill for its protection.

c. The identification of Agency employees in the Register conflicts with section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C.A. 403g), which exempts from disclosure the names and official titles of Agency personnel.

d. Although not an impingement upon statutory functions or responsibilities, it must be noted that the requirements concerning entries of all classified documents on the Register would impose a heavy drain on financial resources and manpower of this Agency.

For the above reasons, the Central Intelligence Agency opposes the enactment of S. 3393 since it does not provide adequate protection for Intelligence Sources and Methods.

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,



W. E. Colby
Director

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1. Director

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Attached for your signature are revised reports on bills concerning Government secrecy which you recently approved for transmittal to OMB for clearance.

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Our reports ended* with a request to exempt Intelligence Sources and Methods. But OMB has advised that the Administration is so strongly opposed to the bills that it is directing that any suggested revisions of the bills be dropped from the reports of all agencies.



TINTL

Acting Legislative Counsel

* Only changes are on last page of each letter
i.e. changes to flat opposition.

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